IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Bail Appl..No. 4571 of 2007()

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CRIME NO.102/04 OF THE SHORNUR POLICE STATION

PETITIONER/ACCUSED NO.1:

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K. MANIYAN, S/O. KRISHNAN,
KALLAMARTHODIYIL HOUSE, MUNDAYA P.O.,
PALAKKAD DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE:

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THE STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
SHORNUR POLICE STATION - THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A. No.4571 OF 2007**

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Dated this the 3rd day of August, 2007

**ORDER**

Application for anticipatory bail. The petitioner is the 1st accused. He faces allegations, inter alia, under Secs.307 and 324 of the IPC. The petitioner is a railway official – a Senior Track Man. Altogether, there are four accused persons. The alleged incident took place on 30/5/04. A crime was registered promptly on 31/5/07. The victim is a Head Constable of the Railway Police. It is alleged that on account of animosity which arose from the fact that the de facto complainant used to warn the petitioner and others against misbehaving under alcoholic drinks on the railway platform, The miscreants allegedly attacked the victim. He has suffered a grievous injury. Two fractures - of the mandible and femur. Investigation is in progress. The petitioner now apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false. The petitioner had come before this Court with a prayer for anticipatory bail and by Annexure-B order dated 21/6/04, the said application was rejected. Subsequently, the petitioner on 16/7/04 and 26/7/04 appeared before the learned Magistrate to seek regular bail; but no action was taken against the petitioner as there was a confusion as to whether the petitioner was really an accused in the crime. As there was no sufficient report to indicate that the petitioner is the accused, no action was taken. The petitioner was neither granted bail nor remanded to custody. In short, the learned Magistrate waited for a report from the Investigator to specify the details of the 1st accused.

3. In that situation, the petitioner went to the learned Sessions Judge and sought anticipatory bail. The learned Sessions Judge adverted to all the relevant circumstances; but dismissed the application on the ground that the apprehension of the petitioner that he will be arrested is without any basis. According to the petitioner, now there is a renewed attempt to arrest the petitioner. It is, in these circumstances, that the petitioner has come to this Court with the present application for anticipatory bail.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that as early as on 30/7/04 a report had been filed before the learned Magistrate giving the details of the 1st accused. The petitioner was thus, without any doubt, arrayed as the 1st accused, it is submitted. Why then was that fact not reported to the learned Sessions Judge when the application for anticipatory bail was dismissed on 9/8/04? There could be no possibility of such a contention being raised that the 1st accused is not specified, if such a report were filed. Why then was the petitioner not arrested after 9/8/04 - the date on which the anticipatory application was dismissed by the learned Sessions Judge, to this date? No satisfactory explanations are offered on that aspect also.

5. I have considered all the relevant circumstances. I am satisfied, in the facts and circumstances of this case, that direction under Sec.438 of the Cr.P.C. can safely be issued in favour of the petitioner. The petitioner is not the one who attempted to flee from justice. He went before the learned Magistrate twice in 2004 with applications to surrender and seek bail. I am, in these circumstances, satisfied that, after more than three years of the date of the crime, the petitioner can certainly be granted anticipatory bail. Appropriate conditions

can, of course, be insisted to ensure the interests of a fair, efficient and expeditious investigation.

6. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 10/8/07. He shall be released on regular bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 4 p.m. on 11/8/07 and 12/8/07. During this period the Investigator shall be entitled to question the petitioner in custody and do all consequential requisite acts in investigation. Thereafter the petitioner shall make himself available for interrogation before the Investigating Officer on all Mondays between 10 a.m. and 12 noon for a period of one month. Subsequently, he shall so make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall

thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 10/8/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 10/8/07.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge